FILED
FEB 16 [illegible]
ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

NO 82-718

ADRON P. BRAINERD,

Petitioner,

vs.

WARREN E. BURGER, et. al,

Respondents.

REPLY BRIEF

Adron P. Brainerd, pro se
320 South Garfield Ave.
Libertyville, Illinois, 60048
(312) 362-7545 or 688-4930

1. Petitioner suggests that respondends and the Court of Appeals majority' misunderstood this courts recent decision in Bankers Trust Co. v. Mallis, 435 U.S. 381, and imposed a new and unjustified limit on relief available under Rule 60 (a) in allowing the District Court to make a "separate judgment" entry.

The Court below in Brainerd v. Beal, 498 F. 2d 901, relied on respondent Cunningham's certification, as apparently this court did, that the docket entries were correct. Based upon these premises, petitioner filed an action against his attorney in Brainerd v. Kates, 68 Ill. App. 3d 781, 386 N.E. 2d 586, and it was at this time (October,7 1977) petitioner found out that Mr. Cunningham had falsely represented the doc- ket entries to the reviewing courts and that petitioner's attorney, Mr. Kates, had timely filed the appeal in Brainerd v. Beal.

This Court in United States v. Indrelunas, 411 U.S. 219, 221, after reviewing the alleged capricious conduct of the government in first seeking to appeal following the filing of the stipulation for damages then later insisting that at that time there had been no judgment which it could have appealed from, this Court held:

> "But whatever may be the appropriate sanctions available in a particular case for capricious conduct on the part of a litigant, we do not believe that a case-by-case tailoring of the "separate document" provision of Rule 58 is one of them".

The Courts below have followed (as indeed they must) this logic, as in Gregson & Assoc. Architects v. Gov. of V.I., 675 F. 2d 589, 592.

2. The cases cited by respondents in relation to Chief Justice Burger are inapropriate in that they pretain to "judicial acts" while the case at bar is addressed to his conduct as a supervisor, where a plaintiff must establish an affirmative link between his injury and the supervisor's failure to act in the face of unconstittutional action by suborinates, such as under the proisions of 28 U.S.C. Section 331. Rizzo v. Goode, 423 U.S. 362.

3. Respondent Cunningham relies on Murray v. City Of Chicago, 634 F. 2d 365, cert, granted, 454 U.S. 962, cert, dismissed, May 17, 1982, as supporting their view that the Federal Court Clerk has "judicial immunity".

A side-by-side comparison of the Court of Appeals' ruling for State and Federal Court Clerks are as follows:

State Court Clerk's Lack of Immunity	Federal Court Clerk's Absolute Immunity
State court clerk Finley's lack of judical immunity: "... pending further clarification of the facts it would be premature to consider whether Finley is entitled to the defense of official immunity (citations) ... Further, if it is shown that Finley's duty to execute warrant recalls is ministerial rather than discretionary, he would not be entitled to immunity (citations)", at page 367.	Federal court clerk Cunninghan's "judical immunity" at appendix page 12: "Malfeasance with respect to filing documents," "comprehend judicial rather ministerial functions." 409 F. 2d at 342. We are bound to follow the logical import of this rule, and believe that the charges against Cunninghan are sufficiently akin to those in Brown so as to fall within the ambit of absolute immunity".

This Court reviewed the question: Does judical immunity cloak circuit court clerk from liability for damages in Section 1983 civil rights suit for acts taken by clerk in discharging his offical duties? This Court in Finley v. Murray, 50 Law Week 3049, case No. 80-2205, ruled that he did not have "judical immunity", cert. dismissed as improvidently granted, May 17, 1982.

CONCLUSION

The petition for a WRIT OF CERTIORARI should be granted.

Respectfully sbmitted.

Adron P. Brainerd , pro se
520 South Garfield Ave.
Libertyville, IL. 60048
(312) 362-7545

UNITED STATES OF AMERICA)
) SS
NORTHERN DISTRICT OF ILLINOIS)

CERTIFICATE AND AFFIDAVIT

I, H. Stuart Cunningham, Clerk of the United States District Court for the Northern District of Illinois do hereby certify and swear that:

1. The docket in the case Adron P. Brainerd vs. Warren W. Beal, et. al., Civil Action 72 C 1571 contains the following entry:

"1-30-73 Order Defendant's motion to dismiss plaintiff's amended complaint is granted. Order plaintiff's amended complaint is dismissed (Court's memorandum opinion will be filed within short date) - Will, J. (JS6) Mailed notices 2-1-73 gs";

2. In accordance with the docketing procedures in effect in the Office of the Clerk at the time the above docket entry was made the date "1-30-73" represents the date on which the Honorable Hubert L. Will entered the order referred to in the docket;

3. In accordance with the docketing procedures in effect in the Office of the Clerk at the time the above docket entry was made, the date indicated for the mailing of notices, i.e. 2-1-73, is the date on which the order was entered by the Office of the Clerk on the docket;

4. The Notice of Appeal in the above referred to case was filed within thirty days after the date referred to in Paragraph 3 above.

5. Attached hereto is a copy of the Civil Docket involved.

IN TESTIMONY WHEREOF, I have hereto subscribed by name and affixed the seal of the aforesaid Court at Chicago, Illinois this 7th day of October, 1977.

H. STUART CUNNINGHAM

SWORN AND SUBSCRIBED before me this 7th day of October, 1977.

Deputy Clerk